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UNITED STATAES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Robbie Pierce

Serial No. 76404296

Donn K. Harms, Esq. for Robbie Pierce.

Brian Neville, Trademark Examining Attorney, Law Office 114 (Leslie Bishop, Acting Managing Attorney).

Before Hanak, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Robbie Pierce (applicant) seeks to register in typed drawing form RUBICON BY MASTERCRAFT for "racing and performance after-market automobile interior parts, namely, seats, headrests, safety upholstery, safety nets, safety belts for automobile seats, and fittings for the same." The application was filed on April 25, 2002 with a claimed first use date of November 1, 1999.

Citing Section 2(d) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark RUBICON previously

registered in typed drawing form for "motor vehicles, namely automobiles and structural parts therefor." Registration No. 2,666,854.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the marks, we note that applicant has adopted the registered mark RUBICON in its entirety and merely added to it what applicant acknowledges is his house mark MASTERCRAFT. (Applicant's brief page 2). As applied to applicant's goods and registrant's goods, the mark RUBICON is entirely arbitrary, and applicant does not contend otherwise. As a general rule, one may not adopt another's mark in its entirety and escape a finding of likelihood of confusion simply by adding his house mark.

3 J. McCarthy, McCarthy on Trademarks and Unfair Competition, Section 23:43 at page 23-93 (4th ed. 2002).

In addition, it must be noted that applicant seeks to register RUBICON BY MASTERCRAFT in typed drawing form. This means that applicant's mark is not limited to being "depicted in any special form," and hence we are mandated "to visualize what other forms the mark might appear in." Phillips Petroleum Co. v. C.J. Webb Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). In particular, we must give special consideration to the manner or manners in which applicant has actually depicted his mark. Id. See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

Applicant's own specimen of use depicts the word RUBICON in extremely large lettering on one line, and then depicts on a second line in far smaller lettering the words BY MASTERCRAFT. Applicant's specimen of use shows its mark being depicted in block letters. Because the cited mark RUBICON is also registered in typed drawing form, then registrant would likewise be free to depict its mark in block letters. Considering the manner in which applicant actually depicts his mark with the RUBICON portion in extremely large lettering on one line and the BY MASTERCRAFT portion in far smaller lettering on a second

line, the two marks are extremely similar. Indeed, a consumer familiar with registrant's mark RUBICON for automobiles, upon seeing applicant's mark as actually used for automobile interior parts, could well overlook the BY MASTERCRAFT portion of applicant's mark, or at the very least, could easily assume that registrant has now simply added "registrant's" house mark (i.e. BY MASTERCRAFT).

In sum, the two marks are extremely similar. Thus, the first Dupont "factor weighs heavily against applicant" because applicant's mark could be and indeed is depicted in a manner such that it is extremely similar to the registered mark. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and registrant's goods, we note that because the marks are extremely similar, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). However, in this case we find that applicant's goods and registrant's goods are clearly related. Indeed, applicant does not even contend to the contrary. While arguing the obvious that his goods and registrant's goods are not "identical,"

applicant acknowledges at page 5 of his brief that his goods and registrant's goods are of the "same class of product" and travel through the same "venues of sale."

In sum, given the fact that applicant's mark is extremely similar to registrant's mark and the additional fact that applicant's goods and registrant's goods are clearly related, we find that there exists a likelihood of confusion.

Decision: The refusal to register is affirmed.